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12 Attorneys for Plaintiff
13 BGC INC.

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 BGC INC., a California public benefit
17 corporation,

18 Plaintiff,

19 v.

20 KIMBERLY BRYANT, an individual;
21 and DOE NO. 1,

22 Defendants.

23 Case No. 22-4801

24 **COMPLAINT**

- 25 1. **Violation of Computer Fraud and**
Abuse Act, 18 U.S.C. § 1030 *et seq.*
- 26 2. **Violation of California Computer**
Data Access and Fraud Act, Cal.
Penal Code § 502 *et seq.*
- 27 3. **Conversion**

28 **DEMAND FOR JURY TRIAL**

COMPLAINT

2 Plaintiff BGC INC. (“BGC”), by and through its undersigned attorneys,
3 brings this suit against Defendants Kimberly Bryant (“Bryant”), and DOE No. 1,
4 inclusive. Plaintiffs allege:

INTRODUCTION

6 1. BGC is a successful public benefit corporation that advances equal
7 representation for Black women in the science, technology, engineering, and
8 mathematics sectors by teaching them skills in computer programming and
9 technology, helping them hone their leadership skills and building sisterhood. Since
10 2011, BGC has served approximately 30,000 students and offers programs through
11 its chapters in 14 cities in the US and one in South Africa. BGC also partners with
12 schools all over the country to offer after-school code clubs, facilitate day-long
13 workshops in schools and day-long “hackathons” during weekends. In total, these
14 programs are offered in approximately 25 schools. BGC also facilitates 2-week
15 summer camps in New York City, Oakland, Detroit, and Atlanta, where girls work
16 on a particular project involving coding. For example, this year students are
17 exploring and learning about Black artists while creating self-portraits using
18 Javascript.

19 2. During the COVID-19 pandemic, BGC began offering virtual programs
20 when programs could not be offered in-person. These events can be accessed by
21 any student with an internet connection. The students for these virtual events
22 register through BGC's website.

23 3. BGC is also in the process of building out its alumni programming.
24 BGC supports alumni with internship opportunities, interview preparation, and
25 creating a community that allows them to lean on one another. The Alumni Portal is
26 housed on BGC's website, and the website is where alumni of BGC's programs can
27 go for information on an upcoming summit, apply for an upcoming scholarship, and
28 find out about other events for BGC alumni in their age group.

1 4. In December 2021, BGC’s founder and former Chief Executive
 2 Officer, Bryant, was put on administrative leave, with pay, pending an independent
 3 investigation into allegations that she had engaged in significant wrongdoing
 4 detrimental to the organization.

5 5. On August 12, 2022, BGC’s Board of Directors held a meeting, during
 6 which the independent investigator provided a report regarding the results of the
 7 internal investigation. At the same meeting, a majority of the members of the Board
 8 voted to terminate Bryant’s employment and remove her from BGC’s Board of
 9 Directors.

10 6. On August 11, 2022—the day before the August 12, 2022 Board
 11 meeting, which had been scheduled in June—Bryant filed a lawsuit in federal court
 12 against BGC, the members of the Special Committee of the Board of Directors
 13 charged with overseeing the internal investigation, BGC’s interim CEO, Wells
 14 Fargo, and certain Wells Fargo executives, alleging, among other things, that donor
 15 funds that were maintained in BGC’s bank account were her personal funds and that
 16 the account was her “sole proprietorship account.” Many of the allegations in
 17 Bryant’s federal lawsuit were copied verbatim from allegations made by her in two
 18 lawsuits filed in California state court in January 2022 against BGC and the
 19 members of the Special Committee.

20 7. Since she was put on paid leave in December, Bryant has sought to
 21 harm BGC by (among other things) refusing to relinquish control over BGC’s
 22 property and assets, including administrative credentials to BGC’s website, claiming
 23 and treating them as her own despite clear ownership by the organization. Days
 24 after her termination, Bryant caused administrative credentials to be used to hijack
 25 BGC’s website. Specifically, she caused BGC’s domains <blackgirlscode.com>,
 26 <blackgirlscode.org>, <blackgirlscode.site> and <blackgirlscode.net>, to be re-
 27 routed so that they were all directed to <saveblackgirlscode.com>, which displayed
 28 a self-serving press release that discloses BGC’s confidential and privileged

1 information. Defendants' conduct has left BGC without a website, violates federal
 2 and state statutes, and has caused irreparable harm to BGC's operation and mission
 3 in the community.

4 8. BGC's website is necessary to its operation and mission because, for
 5 instance, BGC's website allows Black girls to enroll in programs and services,
 6 promotes upcoming events, provides news relevant to its intended beneficiary class,
 7 contains information regarding its various chapters and how to get involved, and
 8 allows visitors to make donations or volunteer, both of which BGC relies on to
 9 operate. Without a functioning website, BGC loses a crucial link between it and
 10 intended beneficiary class it serves to the detriment of its mission.

11 9. Upon information and belief, Bryant and/or DOE No. 1 acting in
 12 concert with Bryant caused the BGC website to be taken offline and redirected
 13 because only an individual or individuals with administrative ownership and control
 14 of the BGC Website could have taken this action, and only the owner of the email
 15 account tiedstarling@gmail.com had such ownership and control.

16 10. As of the date of this filing, BGC's website is nonoperational and
 17 inaccessible, and instead redirects to saveblackgirlscode.com. BGC's counsel has
 18 contacted Bryant's counsel requesting that they cease this misconduct immediately,
 19 but Bryant and her counsel have refused. With each day that passes, BGC suffers,
 20 and continues to suffer, immediate and irreparable harm due to the severe
 21 impediment that Defendants have caused to its mission and operation, including its
 22 ability to receive donations and communicate with the community through the BGC
 23 Website.

24 11. Bryant and DOE No. 1's conduct constitutes, at a minimum, violation
 25 of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*; violation of the
 26 California Computer Data Access and Fraud Act, Cal. Penal Code § 502 *et seq.*; and
 27 conversion. DOES Nos. 2 through 10's conduct constitutes, at a minimum, breach
 28 of fiduciary duty. BGC seeks a preliminary and permanent injunction restoring

1 BGC's access to its website and divesting Defendants' administrative control and
 2 ownership of the website, compensatory damages, and punitive damages.

3 **THE PARTIES**

4 12. Plaintiff BGC is a public benefit corporation organized under the laws
 5 of California with its principal place of business in Alameda County, California.

6 13. Defendant Bryant is an individual residing in Alameda County,
 7 California.

8 14. BGC does not know the true name of DOE No. 1, and for that reason,
 9 DOE No. 1 is sued under a fictitious name. DOE No. 1 is the owner of the email
 10 account tiedstarling@gmail.com, as alleged herein. BGC will seek leave to amend
 11 this complaint, if necessary, when the true name and capacity of DOE No. 1 is
 12 known. Upon information and belief, DOE No. 1 was responsible in some way for
 13 the matters alleged herein and caused harm to BGC.

14 15. Upon information and belief, each of the Defendants was the agent,
 15 principal, employee, representative, or alter ego of the other Defendants and/or acted
 16 with one or more of the other Defendants' knowledge, consent and approval, and
 17 acted within the course and scope of their agency or representative capacity. Each
 18 of the Defendants is therefore responsible for the actions of the other Defendants as
 19 alleged herein.

20 16. Upon information and belief, each of the Defendants was an aider,
 21 abettor, or co-conspirator of each of the other Defendants. Each of the Defendants
 22 acted within the course and scope of such conspiracy or in the course and scope of a
 23 common plan, and each of the Defendants was in some manner responsible for the
 24 acts and omissions alleged in these causes of action. Each of the Defendants has
 25 ratified and/or approved of the acts and omissions of each of the other Defendants.

26 **JURISDICTION AND VENUE**

27 17. This Court has jurisdiction over the subject matter of this action
 28 pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the

remaining state law claims under 28 U.S.C. § 1337(a) because the state law claims are so related to BGC's federal claim that they form part of the same case or controversy and derive from a common nucleus of operative facts.

18. This Court has personal jurisdiction over Bryant because she is a resident of California.

19. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Bryant resides in this District. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2) because the acts, liabilities, and events giving rise to this action occurred within this District.

FACTUAL ALLEGATIONS

BGC's Website Is Critical To Its Mission

20. BGC maintains a website, which is located at various URLs that all direct to the same website: blackgirlscode.com, blackgirlscode.org, blackgirlscode.net and blackgirlscode.site (collectively “BGC Website”). BGC’s ability to communicate through the BGC Website is critical to its service of the community and its intended beneficiary class. The BGC Website allows girls ages 7 through 17 to enroll in programs and services, advertises upcoming events, provides news relevant to its intended beneficiary class, contains information regarding its various chapters and how to get involved, and allows visitors to make donations and volunteer, both of which BGC relies on to operate. Without a functioning BGC Website, BGC loses a crucial link between it and the population it serves to the detriment of its mission.

21. The BGC Website is hosted on the servers of a company called Bluehost, which is owned by Newfold. BGC pays the fees associated with the BGC Website.

22. Since its inception in 2011, the BGC Website has always reflected the BGC name and has always described itself as the official page of BGC. The BGC Website has only been utilized to promote BGC's mission, share news about BGC,

1 and promote various BGC events.

2 23. Since its inception, the BGC Website has served as a critical
3 advertising platform for BGC's events, fundraisers, and other promotional activities.
4 BGC's Website often featured pictures, videos, and articles about past BGC events
5 and also provided links to various news articles highlighting BGC's work and
6 successes.

7 24. From its inception in 2011, the BGC Website has always been
8 expressly mission-related and dedicated solely to BGC's mission. For example,
9 starting in 2011, the BGC Website landing page has always depicted various
10 iterations of the BGC logo and the BGC mission statement.

11 25. From 2011 through August 15, 2022, Bryant never used the BGC
12 Website as a personal website to host purely personal information or posts.

13 26. The BGC Website was managed and controlled by BGC. Bryant and
14 BGC employees worked together to strategize as to how best to leverage the BGC
15 Website to promote BGC events and increase community outreach and fundraising.
16 BGC also utilized the BGC Website to garner event participation, obtain donor and
17 participant information.

18 27. The BGC Website, which permitted third parties to send messages to
19 and contact BGC, was also used to communicate with community members
20 interested in BGC events and actual and potential donors interested in helping BGC
21 grow. In response, community members and girls interested in BGC's learning
22 opportunities were provided with answers to their questions about BGC events or
23 directed resources of BGC staff or volunteers who could assist further.

24 28. Over the last ten years, the BGC Website has directly linked to social
25 media accounts owned and operated by BGC, including Instagram, TikTok,
26 YouTube, and Twitter. And the BGC social media accounts all link back to the
27 BGC Website. All of BGC's social media accounts also utilize the "Black Girls
28 Code" trademark. The BGC social media pages, like the BGC Website, were also

1 created to communicate with BGC intended beneficiaries, volunteers, and current
 2 and potential participants in BGC programming. The social media accounts, like the
 3 BGC Website, have always been held out as the official BGC social media accounts.

4 29. BGC has always exercised influence over the BGC Website. From
 5 2011 through 2021, BGC employees were granted access to the WordPress account
 6 associated with the BGC Website and regularly maintained, updated, and otherwise
 7 managed the content on the BGC Website.

8 30. Additionally, over the last ten years, BGC has hired and paid third-
 9 party contractors to access the BGC Website and assist with the content, branding,
 10 and management of the BGC Website. For example, between 2016-2017, an
 11 individual named John Warren Hanawalt was retained and paid by BGC to help
 12 with reconstructing the BGC Website. And, in or around December 2021, third
 13 party vendor Numbered Studios was hired by BGC to help with branding,
 14 redesigning, and reconstructing the BGC Website. Numbered Studios was also paid
 15 directly for its services by BGC.

16 **Bryant Refuses to Relinquish Control Over The BGC Website**

17 31. On information and belief, around the time Bryant founded BGC in or
 18 about 2011, she set up an account with Bluehost to administratively control BGC's
 19 Website using her then-minor daughter's email account, tiedstarling@gmail.com.
 20 Since then, the person or persons who control tiedstarling@gmail.com have had
 21 administrative control of the website. Such control grants the individual or
 22 individuals the ability to change, delete, or otherwise alter the content, functioning,
 23 or existence of the website. Because it is presently unknown to BGC whether
 24 Bryant or her daughter (or both) now controls the email account, BGC alleges DOE
 25 No. 1 to be the owner of the email account.

26 32. On or about June 30, 2022, counsel for BGC brought the issue of the
 27 domain being tied to the personal email account tiedstarling@gmail.com to the
 28 attention of counsel for Bryant, and asked for Bryant's cooperation in transferring

1 administrative control over the BGC Website to an email address associated with
 2 and controlled by BGC. Counsel for BGC followed up with counsel for Bryant
 3 again several times, including on or about July 7, 8, 22, and 26, 2022.

4 33. As of the dates of each of these requests, Bryant was a paid employee
 5 of BGC and a member of its Board of Directors and therefore had a duty to
 6 cooperate with BGC's requests, make herself available to carry out the mission of
 7 BGC during normal business hours, and act in the best interests of the organization.
 8 Nonetheless, Bryant refused to fulfill BGC's reasonable request and retained
 9 administrative access to the BGC Website and refused to relinquish her access.

10 **Bryant Removes The BGC Website From The Internet And Then Redirects It
 11 To A Press Release Regarding Bryant's Lawsuit Against BGC**

12 34. On or about August 17, 2022, and just days after Bryant was terminated
 13 as CEO and removed from the Board of Directors, the BGC Website was taken
 14 offline such that when visitors attempted to access it, they were shown an error
 15 message and no website content. Upon information and belief, BGC alleges that
 16 Bryant and/or DOE No. 1 caused the BGC Website to be taken offline because only
 17 an individual or individuals with administrative ownership and control of the BGC
 18 Website could have taken this action. The BGC Website remained offline for the
 19 duration of the day.

20 35. The next day, on or about August 18, 2022, when visitors attempted to
 21 access the BGC Website, they were automatically redirected to another website
 22 located at www.saveblackgirlscode.com (the "Redirected Website"). The
 23 Redirected Website displays a press release dated August 16, 2022, purportedly
 24 issued by Bryant's counsel Charles Bonner and James Johnson, a case citation to the
 25 Bryant Lawsuit, and a statement rife with false and misleading statements regarding
 26 the results of the internal investigation and Bryant's termination, and false and
 27 defamatory statements regarding one of BGC's directors:

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saveblackgirlscode.com

Save Black Girls CODE

Monday, August 16, 2022 FOR IMMEDIATE RELEASE

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Federal Case Details: Bryant vs. BGC, Wells Fargo, et al - NDCA Case No. 3:22-cv-04643

Black Girls CODE Founder and CEO, Kimberly Bryant, Wrongfully Terminated After Exoneration by Investigation.

OAKLAND, CA - One day after Ms. Kimberly Bryant, Founder and CEO of Black Girls CODE, filed a federal lawsuit alleging wrongful suspension and conflict of interest by board member Heather Hiles, against individual members of a self-designated "special board committee" of BGC, the members terminated Ms. Bryant's position both as a board member of the organization and as the CEO. Ms. Bryant states the termination is an unfortunate culmination of a hostile takeover initiated by Board Member Heather Hiles of the nonprofit that Ms. Bryant created from the ground up, with Hiles' ultimate desire to gain control of over \$30 million dollars in donated philanthropic funds.

36. Upon information and belief, Bryant and/or DOE No. 1, without authorization, accessed the Bluehost server on which the BGC Website is hosted and caused the domain name system (DNS) that was affiliated with the BGC Website to be redirected to a website established by Defendants.

37. As of the date of this filing, the BGC Website still automatically redirects to the Redirected Website. As a result of Bryant's conduct, BGC does not have a functioning website and has suffered, and will continue to suffer, irreparable harm until its website is restored and Bryant relinquishes access and administrative ownership and control thereto. Defendants' conduct has been detrimental to BGC, its mission, and its function because Defendants have taken and withheld from BGC a core tool it needs to provide its services to the intended beneficiary class. Defendants' conduct also has caused BGC monetary damages in an amount to be

determined at trial.

FIRST CAUSE OF ACTION

Violation of Computer Fraud and Abuse Act,

18 U.S.C. § 1030 *et seq.*

(Against Bryant and DOE No. 1)

38. BGC incorporates the preceding allegations as if fully set forth herein.

7 39. The Bluehost server on which the BGC Website is hosted is a
8 “protected computer” within the meaning of 18 U.S.C. § 1030(e)(2) because it is a
9 data storage facility and/or communications facility used in or affecting interstate
10 commerce or communication.

11 40. Defendants intentionally accessed the Bluehost server on which the
12 BGC Website is hosted and caused the DNS that was affiliated with the BGC
13 Website to be redirected to a website established by Defendants. Defendants did not
14 have authorization to access the Bluehost server on which the BGC Website is
15 hosted because BGC is the only individual or entity authorized to access and make
16 changes to its own website.

17 41. As a direct and proximate result of Defendants' conduct, BGC has
18 suffered, and will continue to suffer, loss and damage within the meaning of 18
19 U.S.C. §1030(e)(8) and (11) in excess of \$5,000 and in an amount to be determined
20 at trial, including but not limited to, impairment or damage to data caused by
21 Defendants' period of exclusive control over the BGC Website; cost and harm in
22 connection with investigation and recovery efforts to secure the restoration of the
23 BGC Website and its data; and cost and harm in connection with BGC's interruption
24 of services, such as BGC's inability to receive donations through the BGC Website
25 and inability to effectively communicate with the intended beneficiary class in
26 furtherance of its mission. BGC will continue to suffer such harm until Defendants'
27 access to Bluehost server on which the BGC Website is hosted is preliminarily and
28 permanently enjoined, and BGC's access is restored.

42. The law permits any person who has suffered damage or loss by reason of a violation of the Act to bring a civil action against the violator for compensatory damages and injunctive or other equitable relief.

43. In undertaking the wrongful conduct alleged herein, Defendants acted willfully, intentionally, and with oppression, fraud, and malice in conscious disregard of BGC's rights to the harm of BGC. BGC is therefore entitled to recover punitive damages from Defendants in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Violation of California Computer Data Access and Fraud Act,

Cal. Penal Code § 502 *et seq.*

(Against Bryant and DOE No. 1)

44. BGC incorporates the preceding allegations as if fully set forth herein.

45. Defendants violated California Penal Code section 502(c)(1) by

knowingly accessing, and without permission, altering, damaging, deleting, destroying, or otherwise using BGC's data in order to wrongfully control or obtain money, property, or data when Defendants accessed the Bluehost server on which the BGC Website is hosted and caused the DNS that was affiliated with the BGC Website to be redirected to a website established by Defendants.

46. Defendants violated California Penal Code section 502(c)(4) by knowingly accessing, and without permission, adding, altering, damaging, deleting, or destroying BGC's data, which resides or exists on Bluehost's servers that host the BGC Website.

47. Defendants violated California Penal Code section 502(c)(5) by knowingly, and without permission, disrupting or causing the disruption of computer services to BGC, the only user authorized to access the Bluehost server on which the BGC Website is hosted.

48. Defendants violated California Penal Code section 502(c)(7) by knowingly, and without permission, accessing or causing to be accessed the

1 Bluehost server on which the BGC Website is hosted.

2 49. Defendants violated California Penal Code section 502(c)(9) by
3 knowingly, and without permission, using BGC's internet domain name in
4 connection with the sending of one or more electronic posts and thereby damaging
5 or causing damage to BGC's data.

6 50. As a direct and proximate result of Defendants' conduct, BGC has
7 suffered, and will continue to suffer, damage or loss, including but not limited to,
8 impairment or damage to data caused by Defendants' period of exclusive control
9 over the BGC Website; cost and harm in connection with investigation and recovery
10 efforts to secure the restoration of the BGC Website and its data; and cost and harm
11 in connection with BGC's interruption of services, such as BGC's inability to
12 receive donations through the BGC Website and inability to effectively
13 communicate with the community in furtherance of its mission. BGC will continue
14 to suffer such harm until Defendants' access to Bluehost server on which the BGC
15 Website is hosted is preliminarily and permanently enjoined, and BGC's access is
16 restored.

17 51. California Penal Code section 502(e)(1) permits the owner or lessee of
18 data who suffers damage or loss by reason of any violation of section 502 to bring a
19 civil action for compensatory damages, injunctive relief or other equitable relief.
20 Section 502(e)(2) further permits the Court in such a civil action to award
21 reasonable attorneys' fees.

22 52. In undertaking the wrongful conduct alleged herein, Defendants acted
23 willfully, intentionally, and with oppression, fraud, and malice in conscious
24 disregard of BGC's rights to the harm of BGC. BGC is therefore entitled to recover
25 punitive damages from Defendants in an amount to be determined at trial.

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THIRD CAUSE OF ACTION

Conversion

(Against Bryant and DOE No. 1)

53. BGC incorporates the preceding allegations as if fully set forth herein.

54. At all times relevant herein, BGC owned and had a right to possess the BGC Website.

55. Defendants substantially interfered with the BGC Website by knowingly or intentionally accessing the Bluehost server on which the BGC Website is hosted and causing the DNS that was affiliated with the BGC Website to be redirected to a website established by Defendants; preventing BGC from having access to the BGC Website; and refusing to return BGC's access to the BGC Website after BGC demanded its return.

56. As a direct and proximate result of Defendants' conduct, BGC has suffered damages in an amount to be determined at trial.

57. In undertaking the wrongful conduct alleged herein, Defendants acted willfully, intentionally, and with oppression, fraud, and malice in conscious disregard of BGC's rights to the harm of BGC. BGC is therefore entitled to recover punitive damages from Defendants in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, BGC prays for judgment and relief against Defendants as follows:

1. For judgment in favor of BGC and against Defendants on all causes of action in this Complaint;

2. For an Order directing Defendants to restore access to the BGC Website to BGC:

3. For an Order directing Defendants to relinquish administrative control and ownership of the BGC Website:

4. For an Order preliminarily and permanently enjoining Defendants from

1 | accessing the BGC Website at the administrative level;

2 5. For an Order awarding BGC damages in an amount to be determined at
3 trial;

4 6. For punitive and exemplary damages for all causes of action for which
5 such damages are authorized, in an amount to be determined at trial;

6 7. For reasonable attorneys' fees and costs incurred herein as allowed by
7 law; and

8 8. For pre-judgment and post-judgment interest at the maximum legal
9 rate, as provided by California law, as applicable, as an element of damages which
10 BGC has suffered as a result of Defendants' wrongful and unlawful acts; and

11 9. For any other and further relief that the Court may deem just and
12 proper.

JURY DEMAND

14 BGC demands a trial by jury.

16 | Dated: August 22, 2022

DLA PIPER LLP (US)

By: /s/ *Tamany Vinson Bentz*

TAMANY VINSON BENTZ

Attorneys for Plaintiff

BGC INC.